



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/771,433	01/26/2001	John C. Voellmicke	DEP 530	8044

7590 02/01/2006

Philip S. Johnson, Esq.
Johnson & Johnson
One Johnson & Johnson Plaza
New Brunswick, NJ 08933-7003

EXAMINER

SOOHOO, TONY GLEN

ART UNIT PAPER NUMBER

1723

DATE MAILED: 02/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/771,433

Applicant(s)

VOELLMICKE ET AL.

Examiner

Tony G. Soohoo

Art Unit

1723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 and 41-88 is/are pending in the application.
- 4a) Of the above claim(s) 1-35 and 41-88 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 36-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>14 sheet total</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group I (claims 1-57, 62-74 and 85-88) of a fluid retention chamber and manifold in the reply filed on 10-24-2005 is acknowledged.
2. Applicant's election without traverse of the species of SPECIES H (claims 36-40) in the reply filed on 1-19-2006 is acknowledged.
3. Claims 1-35, 41-88 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention and species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 10-24-2005 and 1-1-2006.
4. Pending claims for examination are claims 36-39.

Specification

5. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: "output port angle" (alpha). The specification fails to clearly point out that the alpha angle is called an "output port angle" as referred to in the claim.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 1723

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 36-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Wex 5190524.

Wex discloses a base 25, 6, 17, 1b, (the bottom lower surface is fully seen in a plan view in figure 1) and having an output port 5, and input ports 9 as seen in figure 2 with tubes connecting each respective ports on the same surface (bottom part of the figure 2 is defined as the upper surface of the base), and defining a triangle between three ports with respectively chosen port input center openings and the output opening to define a triangle configuration with angle which may be measured, at least clearly seen in figure 1, the angles of 90, 45, 180 degrees.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wex 5190524.

10. The Wex reference discloses all of the recited subject matter as defined within the scope of the claims with the exception of a configuration of the output port angle being between 10-30 degrees.

In regard to the relative positions of the triangle configuration of three of a chosen outlet and inlet ports, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the relative angle of placement of the ports in such that the system may more be in convenient arrangement, whereas it is nothing more than an optimization of a configuration in order to provide a more advantageous or easily constructed system since it has been held that, absent any unexpected result, a mere change in form or shape on the basis of suitability is a matter of obvious mechanical design choice. In re Dailey, 149 USPQ 47 (CCPA 1976). It has been held that rearranging parts of an invention involves only routine skill in the art. In re Japikse, 86 USPQ 70.

Conclusion


11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Pesnicak 5810773, Nelson 3470893, Gula et al 4447230, Whitmore 5674394, Shannon et al 5738662, Haindl 5695478, Shannon et al 5431185, Bischof 4915688, Mastropaolo 6966581, Dikeman et al 5431202, Ogawa 6626468.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tony G. Soohoo whose telephone number is (571) 272 1147. The examiner can normally be reached on 7-5PM, Tue-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1723

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Tony G Soohoo
Primary Examiner
Art Unit 1723
